

1
2
3
4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 THE BOARD OF TRUSTEES, *et al.*, No. C-09-0271 EMC
9 Plaintiffs,
10 v. **ORDER RE PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT**
11 BUILDEX, INC., (Docket No. 14)
12 Defendant.

ORDER RE PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

(Docket No. 14)

15 Plaintiff is the Board of Trustees for the Laborers Health and Welfare Trust Fund for
16 Northern California, the Laborers Vacation-Holiday Trust Fund for Northern California, the
17 Laborers Pension Trust Fund for Northern California, and the Laborers Training and Retraining
18 Trust Fund for Northern California (collectively, “Trust Funds”). The Trust Funds are employee
19 benefit plans and multiemployer plans. Plaintiff filed suit, on behalf of the Trust Funds, against
20 Defendant Buildex, Inc. (doing business as Cleanex, Inc.) pursuant to the Employee Retirement
21 Income Security Act (“ERISA”), *see* 29 U.S.C. § 1132, and the Labor Management Relations Act
22 (“LMRA”). *See id.* § 185. After Buildex failed to respond to Plaintiff’s complaint, default was
23 entered on April 1, 2009. *See* Docket No. 8. Plaintiff thereafter moved for default judgment.

24 The Court held a hearing on the motion on August 27, 2009. At the hearing, the Court
25 expressed concern about whether service of process was properly effected, citing in support *Dill v.*
26 *Berquist Construction Co., Inc.*, 24 Cal. App. 4th 1426, 1436 (1994) (stating that, “in order to serve
27 a corporate defendant by mail at an address outside the state pursuant to [California Code of Civil
28 Procedure] section 415.40, a plaintiff must mail the summons to a person to be served on behalf of

United States District Court
For the Northern District of California

1 the corporation, i.e., to one of the individuals specified in section 416.10"). Plaintiff was given an
2 opportunity to provide the Court with supplemental papers on the issue, *i.e.*, an amended proof of
3 service for the summons and complaint.

4 On September 9, 2009, Plaintiff submitted a supplemental declaration stating that it was not
5 able to provide the Court with an amended proof of service. *See Docket No. 30 (Zinnen Decl. ¶ 3)*
6 (stating that, according to process server, the mailing was addressed only to defendant, and not to
7 Ms. Mamayev specifically). Plaintiff added that, on August 28, 2009, it had re-served the complaint
8 on Defendant and that it anticipated seeking an entry of default again should Defendant fail to timely
9 respond to the complaint. *See Docket No. 30 (Zinnen Decl. ¶ 4)*.

10 Given the contents of the supplemental declaration, the Court deems Plaintiff to have
11 withdrawn its motion for default judgment without prejudice. The Court therefore need not rule on
12 the merits of the motion.

13

14

IT IS SO ORDERED.

15

16 Dated: September 15, 2009

17


EDWARD M. CHEN
United States Magistrate Judge

18

19

20

21

22

23

24

25

26

27

28